

JOHN C. CRUDEN
Assistant Attorney General
SETH M. BARSKY, Chief
S. JAY GOVINDAN, Assistant Chief
ALISON C. FINNEGAN, Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Wildlife and Marine Resources Section
Ben Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611
Tel: (202) 305-0500 | Fax: (202) 305-0275
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA**

SWAN VIEW COALITION, et al.,)	CASE NO. 9:13-cv-00129-DWM
)	
Plaintiffs,)	JOINT STIPULATION AND
)	[PROPOSED] ORDER TO SETTLE
v.)	PLAINTIFFS' CLAIM FOR
)	ATTORNEYS' FEES AND COSTS
CHIP WEBER, Flathead National)	
Forest Supervisor, et al.)	
)	
Defendants.)	
)	

This Stipulation is entered into by and between Plaintiffs Swan View Coalition, Friends of the Wild Swan, Native Ecosystems Council and Alliance for the Wild Rockies (“Plaintiffs”) and Defendants Chip Weber, Flathead National Forest Supervisor, David Schmid,¹ Regional Forester of the U.S. Forest Service, the United States Forest Service (“USFS”), and the United States Fish and Wildlife Service (“FWS”).

WHEREAS, Plaintiffs filed their second amended complaint in this matter on March 3, 2014, alleging that the FWS’ and USFS’ authorization of the Glacier Loon Fuels Reduction and Forest Health Project (“the Glacier Loon Project”) violated the Endangered Species Act (“ESA”), National Environmental Policy Act (“NEPA”), National Forest Management Act, and Administrative Procedure Act;

WHEREAS, the second amended complaint further alleged that FWS and USFS failed to conduct analysis under NEPA and consultation under the ESA for decisions regarding the 2010 acquisition of the “Legacy Lands” and Agreed Operating Procedures;

WHEREAS, Plaintiffs filed a motion for summary judgment on March 17, 2014 and Defendants filed a cross motion for summary judgment on April 15, 2015;

¹ Substituted pursuant to Federal Rule of Civil Procedure 25(d).

WHEREAS, the Court entered an order granting in part and denying in part Plaintiffs' motion for summary judgment on September 25, 2014 (ECF No. 51), and enjoined the Glacier Loon Project and further enjoined FWS and USFS from proceeding under the Agreed Operating Procedures until NEPA analysis and ESA consultation was completed;

WHEREAS, the Court entered Judgment in Plaintiffs' favor on September 25, 2015 (ECF No. 52);

WHEREAS, Plaintiffs filed a motion seeking an award of costs and attorney's fees pursuant to the ESA, 16 U.S.C. § 1540(g), and the Equal Access to Justice Act, 28 U.S.C. § 2412(d), on October 6, 2014 (ECF No. 58);

WHEREAS, Defendants filed a motion to alter or amend the judgment, and for clarification of the Court's order on summary judgment pursuant to Federal Rule of Civil Procedure 59(e) on October 23, 2014 (ECF No. 66);

WHEREAS, on December 8, 2014, the Court granted in part and denied in part Defendants' Rule 59(e) motion and deferred the deadline for Defendants' response to Plaintiffs' motion for fees for 60 days or until all appellate proceedings were completed (ECF No. 77);

WHEREAS, Defendants filed an appeal of the Court's September 25 and December 8, 2014 orders on February 5, 2015 and Plaintiffs filed a notice of cross-appeal on February 13, 2015;

WHEREAS, Defendants filed a notice of dismissal pursuant to Federal Rule of Appellate Procedure 42(b) on June 17, 2015, and Plaintiffs filed a notice of voluntary dismissal of their cross-appeal on June 18, 2015;

WHEREAS, Plaintiffs have provided Defendants with their contemporaneous time records and other information for their claim for attorneys' fees and costs, and counsel for Plaintiffs and Defendants have engaged in good faith, confidential settlement communications concerning Plaintiffs' claims for attorneys' fees and costs;

WHEREAS, the parties have reached an agreement as to an appropriate settlement of Plaintiffs' claims for fees and costs and agree that settlement of this issue in this manner is in the public interest and is an appropriate way to resolve Plaintiffs' claims for fees and costs; and

WHEREAS, the parties enter this Stipulation without any admission of fact or law, or waiver of any claims or defenses, factual or legal, except as specified in this Stipulation;

NOW, THEREFORE, IT IS STIPULATED BY AND BETWEEN THE PARTIES AS FOLLOWS:

1. Defendants agree to settle all of Plaintiffs' claims for attorneys' fees and costs in this matter, including fees and costs incurred on appeal, for a total of \$105,000.00. Electronic payment in the settlement amount of \$105,000.00 will be

made to Plaintiffs' Montana IOLTA lawyer's trust account at U.S. Bank, Public Interest Defense Center P.C. Montana IOLTA Trust Account.

2. Plaintiffs agree to furnish Defendants with the information necessary to effectuate payment pursuant to Paragraph One and to hold the United States harmless for any loss caused by following this authorization and direction, if any loss should occur. Defendants agree to submit all necessary paperwork to the appropriate office within ten business days of receipt of the signed Court order approving this Stipulation or the receipt of the information described in this Paragraph, whichever is later. Counsel for Plaintiffs agree to send confirmation of the receipt of the payment to counsel for Defendants within 14 days of such payment.

3. Plaintiffs agree to accept payment of \$105,000.00 in full satisfaction of any and all claims for attorneys' fees and costs of litigation in this matter. Plaintiffs agree that receipt of this payment from Defendants shall operate as a release of Plaintiffs' claims for attorneys' fees and costs in this matter.

4. Plaintiffs reserve the right to seek additional fees and costs incurred subsequent to this Stipulation arising in any future litigation or continuation of the present action. Defendants reserve the right to contest fees claimed by Plaintiffs or Plaintiffs' counsel, including hourly rates and the number of hours billed, in any future litigation or continuation of the present action. Further, this Stipulation as to

attorneys' fees and costs has no precedential value and shall not be used as evidence in any other litigation.

5. Nothing in this Stipulation shall be interpreted as, or shall constitute, a requirement that Defendants are obligated to pay any funds exceeding those available, or take any action in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other appropriations law.

6. The parties agree that this Stipulation was negotiated in good faith and that this Stipulation constitutes a resolution of claims that were denied and disputed by the parties. By entering into this Stipulation, the parties do not waive any claim or defense.

7. This Stipulation contains the entire agreement between the parties, and is intended to be the final and sole agreement between the parties. The parties agree that any prior or contemporaneous representations or understandings not explicitly contained in this written Stipulation, whether written or oral, are of no further legal or equitable force or effect.

8. The undersigned representatives of each party certify that they are fully authorized by the party or parties they represent to agree to the terms and conditions of this Stipulation and do hereby agree to the terms herein.

9. In an electronic mail dated June 18, 2015, counsel for Plaintiffs, Rebecca K. Smith, authorized Alison C. Finnegan, counsel for Defendants, to sign

this joint stipulation and enter it in the CM/ECF system.

IT IS SO STIPULATED.

Dated this 2nd day of July, 2015.

Respectfully submitted,

JOHN C. CRUDEN
Assistant Attorney General
United States Department of Justice
Environment & Natural Resources Division
SETH M. BARSKY, Chief
S. JAY GOVINDAN, Assistant Chief

/s/ Alison C. Finnegan
ALISON C. FINNEGAN, Trial Attorney
(Pennsylvania Bar No. 88519)
Wildlife & Marine Resources Section
Benjamin Franklin Station, P.O. Box 7611
Washington, D.C. 20044-7611
Tel: (202) 305-0500; Fax: (202) 305-0275
Attorneys for Defendants

/s/ Rebecca K. Smith
REBECCA K. SMITH
Public Interest Defense Center, P.C.
P.O. Box 7584
Missoula, MT 59807
(406) 531-8133
publicdefense@gmail.com

TIMOTHY BECHTOLD
Bechtold Law Firm, PLLC
P.O. Box 7051
Missoula, MT 59807
(406) 721-1435
tim@bechtoldlaw.net
Attorneys for Plaintiffs

ORDER

The Court hereby approves and orders each and every term of this Stipulation. IT IS SO ORDERED.

Dated: this _____ day of _____, 2015.

The Honorable Donald W. Molloy
United States District Judge